



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-2900 FAX (603) 271-2456



Vermillion
120 Northeastern Boulevard
Nashua, NH 03062

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 03-032

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Vermillion, pursuant to RSA 147-A:17-a. This Administrative Fine by Consent ("Agreement") is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of NH, having its main office at 6 Hazen Drive, Concord, NH.
2. Vermillion is a New Hampshire corporation that registered with the New Hampshire Secretary of State's Office on May 29, 2001. Vermillion was formed from the merger of Eastern Rainbow, Inc. and Souhegan Color, Inc. on January 5, 2000, with the surviving corporation being Eastern Rainbow, Inc. On May 29, 2001, Eastern Rainbow, Inc. registered the name change to Vermillion. Vermillion has a mailing address of 120 Northeastern Boulevard, Nashua, NH 03062.

III. BACKGROUND

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 147-A:17-a, the Commissioner of DES is authorized to impose fines of up to \$2,000 per violation for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.
3. Vermillion is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on March 13, 2002, stating a change of company name from Souhegan Color, Inc. to Vermillion. EPA Identification Number

NHD986485704 was originally assigned to Souhegan Color, Inc. for the site located at 120 Northeastern Boulevard, Nashua, NH on September 30, 1993.

4. On April 17, 2003, DES personnel inspected Vermillion for compliance with RSA 147-A and its implementing regulations, the New Hampshire Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued Administrative Order No. WMD 03-12 ("Order") to Vermillion on July 17, 2003. Based on the violations observed during the inspection listed above, DES believes that an administrative fine is appropriate in this case for the Class I violations.

IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. Specifically, the Order cited Vermillion for failing to notify DES verbally or in writing of the change in the generator name within 30 days of the effective date of the change (*i.e.*, Vermillion was the registered corporation name since May 29, 2001 but did not notify DES until March 13, 2002) as required by Env-Wm 504.02(d) ("Violation 1"). Env-C 612.08(e), which references Env-Wm 504.02(c) modified in August 2000 to Env-Wm 504.02(d), authorizes a fine of \$500.

2. Specifically, the Order cited Vermillion for failing to close two (2) 55-gallon containers of hazardous waste located in the Compressor Room, as required by Env-Wm 507.01(a)(3) ("Violation 2"). Env-C 612.06(c)(1) authorizes a fine of \$400 for each container that is 55-gallons or greater, for a potential fine of \$800.

3. Specifically, the Order cited Vermillion for failing to mark three (3) 55-gallon containers of hazardous waste located in the Compressor Room with the beginning accumulation date, as required by Env-Wm 507.03(a)(1)a. ("Violation 3"). Env-C 612.06(k) authorizes a fine of \$250 for each container that is greater than 55-gallons, for a potential fine of \$750.

4. Specifically, the Order cited Vermillion for failing to mark three (3) 55-gallon containers of hazardous waste located in the Compressor Room with the words "hazardous waste", words that identify the contents of the container, and the EPA or state waste number, as required by Env-Wm 507.03(a)(1)b., c., and d. ("Violation 4"). Env-C 612.06(l) authorizes a fine of \$600 for each container that is 55-gallons or greater, for a potential fine of \$1,800.

5. Specifically, the Order cited Vermillion for failing to conduct weekly inspections of the Hazardous Waste Storage Area (*i.e.*, the Compressor Room) for three years, as required by Env-Wm 509.02(a)(1) ("Violation 5"). Env-C 612.07(a) authorizes a fine of \$1,000 per inspection per area per week, for a potential fine of \$156,000.

6. Specifically, the Order cited Vermillion for failing to perform initial hazardous waste training for three (3) employees with hazardous waste management duties (*i.e.*, two (2) Emergency Coordinators and one (1) person who signs manifests), as required by Env-Wm 509.02(a)(2) ("Violation 6"). Env-C 612.07(b) authorizes a fine of \$1,750 per individual not trained for initial training, for a potential fine of \$5,250.

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7. Specifically, the Order cited Vermillion for failing to maintain adequate preparedness and prevention measures by not maintaining spill control equipment near the hazardous waste storage area (*i.e.*, the Compressor Room), as required by Env-Wm 509.02(a)(4) ("Violation 7"). Env-C 612.07(d) authorizes a fine of \$1,250 per requirement not met per storage area.
8. Specifically, the Order cited Vermillion for failing to have a contingency plan on-site, as required by Env-Wm 509.02(a)(5) ("Violation 8"). Env-C 612.07(e) authorizes a fine of \$2,000.
9. Specifically, the Order cited Vermillion for failing to post emergency postings at the nearest telephone to the hazardous waste storage area (*i.e.*, the Compressor Room), as required by Env-Wm 509.02(b) ("Violation 9"). Env-C 612.07(h) authorizes a fine of \$1,000 per area.
10. Specifically, the Order cited Vermillion for managing two (2) containers of hazardous waste as satellite storage containers when the storage area (*i.e.*, the Compressor Room) failed to meet the definition of a satellite storage area (*i.e.*, "at or near the point of generation"), as required by Env-Wm 509.03 ("Violation 10"). Env-C 612.07(j) authorizes a fine of \$1,000 per satellite storage area.
11. Specifically, the Order cited Vermillion for failing to provide hazardous waste training for six (6) satellite storage operators, with hazardous waste duties at four (4) satellite storage areas located in the Press Room, as required by Env-Wm 509.03(b) ("Violation 11"). Env-C 612.07(j) authorizes a fine of \$1,000 per satellite storage area, for a potential fine of \$4,000.
12. Specifically, the Order cited Vermillion for failing to close two (2) 25-gallon satellite storage containers of hazardous waste located in the Press Room, as required by Env-Wm 509.03(d) ("Violation 12"). The potential fine for this violation is included in the fine sought in Paragraph 11 because the violation occurred in one of the same satellite storage areas.
13. Specifically, the Order cited Vermillion for failing to mark four (4) 25-gallon satellite storage containers of hazardous waste located in the Press Room with the words "hazardous waste", and words that identify the contents of the container, as required by Env-Wm 509.03(g) ("Violation 13"). The potential fine for this violation is included in the fine sought in Paragraph 11 because the violation occurred in one of the same satellite storage areas.
14. Specifically, the Order cited Vermillion for failing to forward five (5) copies of hazardous waste manifests, (*i.e.*, MAM652174, MAQ011739, MAQ071682, NHH0048289, and NHH0056368) with signatures, to DES within five (5) days, as required by Env-Wm 510.02(d) ("Violation 14"). Pursuant to Env-C 610, which references Env-Wm 510.02(d), DES proposes a fine of \$500 per shipment, for a potential fine of \$2,500.
15. Specifically, the Order cited Vermillion for failing to use the correct EPA ID number and generator name on five (5) hazardous waste manifests (*i.e.*, MAM728575, MAM732640, MAM713580, MAM700268, and MAM705744) as required by Env-Wm 510.03(a) ("Violation 15"). Env-C 612.04(b) authorizes a fine of \$500 per shipment, for a potential fine of \$2,500.

16. Specifically, the Order cited Vermillion for failing to retain copies of six (6) hazardous waste manifests (*i.e.*, MAM700268, MAM652174, MAQ011739, MAQ071682, NHH0048289, and NHH0056368) including five (5) original generator copies and one (1) copy certified by the designated facility for three (3) years from the date of signature by the generator, as required by Env-Wm 512.01(a)(1) ("Violation 16"). Env-C 612.08(a) authorizes a fine of \$300 per type of record.

17. Specifically, the Order cited Vermillion for failing to close two (2) containers of universal waste lamps located in the Dark Room, except to add or remove universal waste, as required by Env-Wm 1112.03(c)(1) ("Violation 17"). Pursuant to Env-C 610, which references Env-Wm 1102.03(c)(1), the Division proposes a fine of \$300, for a potential fine of \$600.

18. Specifically, the Order cited Vermillion for failing to store one (1) bundle of universal waste lamps located in the Dark Room in container(s), as required by Env-Wm 1112.03(a) ("Violation 18"). Pursuant to Env-C 610, which references Env-Wm 1102.03(a), DES proposes a fine of \$1,000 for storage practices that pose a hazard to human health and the environment.

19. Specifically, the Order cited Vermillion for failing to label two (2) containers and one (1) bundle of universal waste lamps located in the Dark Room, with any of the following markings: "Universal Waste – Lamps(s)", "Waste Lamp(s)", or "Used Lamp(s)", as required by Env-Wm 1112.04 ("Violation 19"). Pursuant to Env-C 610, which references Env-Wm 1112.04, DES proposes a fine of \$100 per container for a potential fine of \$300.

V. PAYMENT, WAIVER OF HEARING

1. DES agrees to waive fines associated with Violations 14, and 17 through 19, because they are not Class I violations.

2. DES believes the following fines are appropriate for Violations 1 through 13, 15 and 16, which are Class I violations.

- a. Violation 1 is a Class I violation. DES has determined that due to Vermillion's high level of cooperation in providing information and its effort to correct that violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$375.
- b. Violation 2 is a Class I violation. DES has determined that due to Vermillion's high level of cooperation in providing information and its effort to correct that violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$600.
- c. Violation 3 is a Class I violation. DES has determined that due to Vermillion's high level of cooperation in providing information and its effort to correct that violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$563.
- d. Violation 4 is a Class I violation, DES has determined that due to Vermillion's high level of cooperation in providing information and its effort to correct that violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$1,350.

- e. Violation 5 is a Class I violation. Vermillion failed to conduct inspections of the hazardous waste storage area for three (3) years. For settlement purposes only, DES is seeking a fine for failing to conduct inspections at one (1) hazardous waste storage area for twenty-five (25) weeks. DES is thus seeking a penalty of \$25,000 (*i.e.*, twenty-five (25) inspections at \$1,000 each). DES has determined that due to Vermillion's high level of cooperation in providing information and its effort to correct that violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$18,750.
- f. Violation 6 is a Class I violation. DES has determined due to the fact that two (2) Emergency Coordinators had received spill response training in 1993, that two (2) initial trainings be reduced by 25% for a total proposed penalty of \$4,375. DES has further determined that due to Vermillion's high level of cooperation in providing information and its effort to correct that violation, that a 20% reduction should be applied. DES is thus seeking a fine of \$3,500.
- g. Violation 7 is a Class I violation. DES has determined that due to Vermillion's high level of cooperation in providing information and its effort to correct that violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$938.
- h. Violation 8 is a Class I violation. DES has determined that due to Vermillion's high level of cooperation in providing information and its effort to correct that violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$1,500.
- i. Violation 9 is a Class I violation. DES has determined that due to Vermillion's high level of cooperation in providing information and its effort to correct that violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$750.
- j. Violation 10 is a Class I violation. DES has determined that due to Vermillion's high level of cooperation in providing information and its effort to correct that violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$750.
- k. Violation 11 is a Class I violation. DES has determined that due to Vermillion's high level of cooperation in providing information and its effort to correct that violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$3,000.
- l. Violation 12 is a Class I violation. The potential fine for this violation is included in the fine sought in Violation 11.
- m. Violation 13 is a Class I violation. The potential fine for this violation is included in the fine sought in Violation 11.
- n. Violation 15 is a Class I violation. DES has determined that due to Vermillion's high level of cooperation in providing information and its effort to correct that violation, that a 20% reduction should be applied. DES is thus seeking a fine of \$2,000.

- o. Violation 16 is a Class I violation. DES has determined that due to Vermillion's high level of cooperation in providing information and its effort to correct that violation, that a 20% reduction should be applied. DES is thus seeking a fine of \$240.

3. The total administrative fine for the Class I violations described above is \$34,316. However, DES has determined that based on Vermillion having no history of non-compliance with the hazardous waste requirements, that an additional penalty reduction of \$6,863 (20%) should be applied for a final fine of \$27,453 of which \$11,320 shall be a cash fine paid in accordance with Paragraph 4 and \$16,133 shall be credited toward the Supplemental Environmental Project ("SEP") in accordance with Paragraph 5.

4. Vermillion agrees to pay \$11,320 within the next nine (9) months as follows:

- a. \$1,264 of the fine shall be due and payable upon execution of this Agreement by Vermillion.
- b. \$10,056 shall be paid in eight equal payments of \$1,257 due on the first of each month beginning June 1, 2004 and ending with the last payment due on January 1, 2005.

5. Vermillion shall expend at least \$16,133 to print environmental educational materials ("Printing Project") for the Environmental Hazards Management Institute ("EHMI") or another non-profit organization approved by DES. Vermillion shall notify EHMI of the Printing Project donation and submit to DES within fourteen (14) days of the final execution of this agreement written acceptance by EHMI of this donation. Vermillion shall complete this Printing Project within one (1) year of the execution of this Agreement and shall certify to DES within thirteen (13) months of the effective date of this Agreement that the SEP has been performed and at least \$16,133 in costs were incurred. Vermillion shall submit with this certification copies of purchase orders and receipts. If the final cost of the Printing Project does not reach the \$16,133 commitment, then any difference will be paid to the State of New Hampshire Hazardous Waste Cleanup Fund by the same method outline under paragraph 6 within ten (10) days of the one (1) year anniversary of the Agreement.

6. Payment under Section V. Paragraph 4 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and shall be mailed to:

DES Legal Unit
Attn: Michael Scialfani, Legal Assistant
PO Box 95
Concord, New Hampshire 03302-0095

7. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

Vermillion

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8. By executing this Agreement, Vermillion waives its right to a hearing on or any appeal of the administrative fines identified in this Agreement, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

9. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Vermillion, and the Director of the Waste Management Division, and the Commissioner of DES.

10. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

VERMILLION

COPY

By: Roy Simpson, President
Duly Authorized

5/24/04
Date

DEPARTMENT OF ENVIRONMENTAL SERVICES

COPY

Anthony Giunta, P.G.
Director
Waste Management Division

6/4/04
Date

COPY

for Michael P. Nolin, Commissioner

6/7/04
Date